

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

**CHARLES DEWAYNE ALLEN,
Petitioner,**

v.

**Civil Action No. 3:05CV74
Criminal Action No. 3:00CR57-5
(BROADWATER)**

**UNITED STATES OF AMERICA,
Respondent.**

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, dated April 24, 2006. The Petitioner filed objections to the Report on May 8, 2006.

In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review. After reviewing the above, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

The Petitioner objects to the Magistrate Judge's construal of Petitioner's filing of additional materials as a motion to supplement his action under 28 U.S.C. §2255. The Court concludes that the Magistrate Judge's categorization of the additionally filed materials was proper and gave the Petitioner a full evaluation of the merits of his claim.

The Petitioner then argues that the Magistrate Judge's findings should not be adopted by the Court because the Petitioner was acting pro se. The Petitioner further requests an extension of time to file further objections with the assistance of a family friend.

The Court finds that this action is successive under 28 U.S.C. § 2255 and Petitioner was denied leave to file a successive petition by the Fourth Circuit Court of Appeals on March 30, 2005.

Furthermore, the substantive claims raised by the Petitioner are without merit. As set forth in the Magistrate Judge's Report, the petitioner entered a plea agreement with the United States that contained a stipulated drug quantity to be used for relevant conduct purposes. The record does not indicate any violation of the Petitioner's rights under a Booker analysis, if that case did apply to his case. United States v. Booker, 543 U.S. 220 (2005). Additionally, there has been no showing of any other Constitution violation.

Accordingly, the Court **ORDERS** that the Petition be **DENIED and DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation. It is further **ORDERED** that this action be and is hereby **STRICKEN** from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the Petitioner and all counsel of record herein.

DATED this 20th day of June 2006.



W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE